IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Writ Petition No.1701 of 2007

Sunil Kantilal Bora Petitioner

Vs.

The State of Maharashtra Respondent

Mr.Ganesh Gole for petitioner.

Mr.D.P.Adsule, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 10, 2007.

P.C.

. Heard Mr. Gole, the learned counsel for the petitioner who is impleaded as accused no.2 in Regular Criminal Case No.165 of 2007 filed before the learned Judicial Magistrate, First Class at Ichalkaranji. By his order dated 18/7/2007 the learned Magistrate directed investigation under Section 156(3) of Cr.P.C. and this order came to be challenged in Criminal Revision Application No.63 of 2007. The learned Ad-hoc Addl. Sessions Judge at Ichalkaranji was pleased to dismiss the Revision

Application by his judgment and order dated 16/8/2007

and hence this petition.

. The complainant's case was twofold viz. that it is in respect of the property owned by him and which was occupied by accused no.1. A false and fabricated sale deed was prepared by accused nos.1 and 2 and accused nos.4 and 5 were the signatories for the same whereas accused no.3 impersonated the complainant. For the Sale Deed of Rs.1,08,000/- stamps valued at Rs.6500/- were purchased on 8/3/2006 and accused no.1 was shown to have sold the property in his possession and belonging to the complainant, to accused no.2. Secondly the accused no.3 approached the Collector for Stamps and made a representation that the sale transaction was cancelled and the stamp amount of Rs.6500/- be refunded to him. The Collector accepted this representation and the amount of Rs.6500/- was sent by demand draft in the name of the complainant and at his address and that is how the complainant came to know of the whole transaction. He prayed that the accused be punished for the offences punishable under Sections 199, 200, 407, 419, 420, 467 and 468 read with Section 34 of IPC.

. Mr.Gole at the outset relied upon the order passed in the case of Balsubramaniam Vs. State by Police, T.N. & anr. **[2002 SCC (Cri) 1815]** and submitted that in any case a reference to the larger Bench is made by the Apex Court and, therefore, this petition deserves to be admitted and proceedings before the trial Court deserve to be stayed unless the controversy is finally adjudicated by the Apex Court. This submissions are unsustainable.

. First of all the complaint submitted by the complainant is not in respect of the documents which are the subject matter of any proceedings pending before the Court and secondly the complaint does not set out any offence specifically which falls within the ambit of Section 195(b)(ii) of Cr.P.C. The learned Ad-hoc Addl. Sessions Judge noted that the property mentioned in the complaint is in fact in the possession of accused no.1 who is a tenant for a long time and accused no.2 claimed to have purchased the said property. Thus it was, prima facie, a conspiracy by all the accused who prepared false and fabricated documents and thus a prima facie case was made out for investigations by the police under

Section 156(3) of Cr.P.C. The view taken by the Courts below cannot be termed as perverse or illegal and, therefore, no interference is called for under the supervisory powers under Article 227 of the Constitution.

. The petition is rejected.

(B.H.MARL